Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
IP-Enabled Services	)	WC Docket No. 04-36
	)	
	)	

REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION™

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SUMMARY

The initial comments in this proceeding reveal that IP-enabled services are inherently interstate and international in scope, making an exclusively federal regulatory scheme imperative. The record also demonstrates that the market for IP-enabled services is highly competitive, suggesting that there is no basis for subjecting such services to economic regulation. As the CMRS industry demonstrates, a competitive market produces optimal consumer benefits, most notably a multiplicity of choices among, and control over, which provider to use, price plans, service options, coverage areas, and much more. If the Commission determines that IP-enabled services fall within the scope of a traditional definition of "telecommunications service," and therefore are subject to Title II of the Act, the FCC should exercise its authority under section 10 of the Act and generally forbear from economic regulation. If the Commission instead determines that IP-enabled services are more consistent with the definition of an information service subject to Title I authority, the Commission can apply an appropriately light regulatory touch while subjecting the offerings to social policy obligations, as needed, pursuant to the Commission's ancillary authority. IP-enabled services should be allowed to continue to innovate towards achieving social policy goals such as emergency response, law enforcement access, and disabilities access. Consumers in fact may be deprived of the most technically advanced and economically affordable solutions, and precious financial investment may be squandered, if the Commission acts prematurely to prescribe a specific path towards compliance with these goals. Finally, the record reveals widespread support for broadening the base of contributors to universal service. At the same time, the Commission should consider whether the deployment of IP-enabled services reduces the need for high subsidy levels over time.

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To: The Commission

REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION™

CTIA – The Wireless Association™ ("CTIA") hereby submits the following reply comments in the above-captioned proceeding.

I. THE RECORD DEMONSTRATES THAT IP-ENABLED SERVICES ARE INHERENTLY INTERSTATE AND THEREFORE SUBJECT TO EXCLUSIVE FEDERAL JURISDICTION

The initial comments in this proceeding convincingly demonstrate that exclusive federal regulation of IP-enabled services is both appropriate, given the inter-jurisdictional nature of IP-enabled services,[1] and necessary, to avoid stifling the development and continued proliferation of this burgeoning service and all of the consumer benefits it promises. Most carriers, providers of IP-enabled services, and equipment suppliers participating in this important proceeding correctly and persuasively explain that IP-enabled services are inherently interstate and as such should only be regulated at the federal level.[2] Even more significant, most carriers with the greatest

[1] *See, e.g., La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 375 n.4; *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990); *Ill. Bell Tel. Co. v. FCC*, 833 F.2d 104 (D.C. Cir. 1989); *Pub. Util. Comm'n of Tex. v. FCC*, 886 F.2d 1325 (D.C. Cir. 1989); *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523, 543 (8th Cir. 1988).

[2] *See, e.g.*, 8x8 comments at 11; Alcatel comments at 9; AT&T comments at 42-43; BellSouth comments at 11; Cablevision comments at 11-12; Cisco comments at 3-6; CompTel
(continued on next page)

experience actually providing IP-enabled services to consumers strongly support exclusive federal jurisdiction.[3]

Vonage, for example, compellingly describes the do-or-die decision it faced when the Minnesota Commission concluded that Vonage's service should be regulated at the state level.[4] Because of the inherently and inseverably interstate nature of the service it was providing, Vonage was unable to avoid having its service available to consumers in Minnesota.[5] Because it could not comply with Minnesota's technology-specific requirements relating to E-911, Vonage was faced with either ceasing to do business, because its service offering could not be tailor-made to Minnesota's specifications, or violating state law. Just this one example demonstrates forcefully why it is critical for the Commission to exercise its clear legal authority to preempt state regulation of a service that is inherently interstate in nature and uniquely within the Commission's jurisdiction.[6]

Fundamentally (and as this example demonstrates), IP-enabled services "separate the user from geography."[7] As such, it is neither practically nor economically possible to separate them

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comments at 3-5; CTIA comments at 2-3, 6-7; Dialpad comments at 8-9; ITIC comments at 4; MCI comments at 23-24; Net2Phone comments at 13-14; nexVortex comments at 6; Nuvio comments at 6-7; PointOne comments at 7-10; Qwest comments at 25-33; Skype comments at 3-4; USTA comments at 34-36; Valor comments at 8-9; Verizon comments at 31-38.

[3] *See, e.g.,* Skype comments at 3; Vonage comments at 14-20; VON Coalition comments at 19-21.

[4] Vonage comments at 19-23.

[5] *Id.*

[6] *See, e.g.,* Motorola comments at 4; Dialpad comments at 4-5.

[7] *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service,* Memorandum Opinion & Order, 19 FCC Rcd 3307 ¶ 4 (2004). *See also* Cisco comments at 4 (citing same).

into interstate and intrastate components.[8] Under these circumstances, exclusive federal preemption is the appropriate course[9] -- as even self-described "economically rational" state regulators agree.[10]

In the face of the Commission's silence on how IP-enabled services should be regulated, however, a steadily increasing number of state regulators are attempting to fill the void with a patchwork of inconsistent and unpredictable state regulations.[11] Although Minnesota's and New York's efforts both were correctly stopped by the courts, the fact remains that many states clearly

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[8] In this regard, CTIA supports the recent announcement by the Commission that its Internet Policy Working Group will hold a roundtable discussion on international issues associated with the migration of services to IP-based platforms, given the strain these new services place on "legacy industry structures, revenue flows, and investment." *FCC to Hold Global Roundtable Discussion on Internet-Protocol Based Services*, News Release (July 12, 2004).

[9] *See, e.g.,* Cisco comments at 4-6; Microsoft comments at 14-17; Net2Phone comments at 13-16; USTA comments at 34-36.

[10] FERUP comments at 7-9 ("A national policy – one that is deregulatory in nature and sends an unambiguous signal to the market that the U.S. is receptive to emerging communications technologies – is the best protection against inconsistent and burdensome state regulation.").

[11] Several state utility commissions, including Minnesota, New York and Washington, have recently granted orders regulating VoIP at the state level. Additionally, the Public Utilities Commission of the State of California initiated an investigation earlier this year to consider the appropriate regulatory framework for VoIP. *In the Matter of the Minnesota Department of Commerce Against Vonage Holding Corp. Regarding Lack of Authority to Operate in Minnesota*, Docket No. P-6214/C-03-108, *Order Finding Jurisdiction and Requiring Compliance* (September 11, 2003); *Complaint of Frontier Telephone of Rochester, Inc. Against Vonage Holdings Corporation Concerning Provision of Exchange and InterExchange Telephone Service in New York State in Violation of the Public Service Law*, Case No. 03-C-1285, *Order Establishing Balanced Regulatory Framework for Vonage Holdings Corporation* (May 21, 2004); *Washington Utilities and Transportation Commission v. LocalDial Corporation*, Docket No. UT-031472, *Final Order Granting Motions for Summary Determination*, Order No. 08 (June 12, 2004); *Order Instituting Investigation on the Commission's Own Motion to Determine the Extent to Which the Public Utility Telephone Service Known As Voice Over Internet Protocol Should be Exempted from Regulatory Requirements*, Investigation No. 04-02-007, *Order on Investigation* (February 11, 2004).

wish to secure a regulatory "hook" into IP-enabled services. The wireless industry urges the Commission to expeditiously provide clarity regarding how IP-enabled services will be regulated by unequivocally preempting, in the near term, state regulation of such services.

The Commission should consider the question of preemption rationally, and not let hyperbole and misinformation rule the day. Notwithstanding some commenters' assertions to the contrary, federal preemption does not impinge on consumers' rights and abilities to address grievances and concerns regarding IP-enabled services.[12] As described in more detail in Section II, below, the market for IP-enabled services is vibrantly competitive. Consumers have a myriad of choices among providers, price plans, service options, coverage areas and much more. If wireless consumers are dissatisfied with their service or their provider, 98 percent of them have three or more other alternative providers to approach, and 83 percent have five or more. These kinds of consumer choices are the hallmarks of a competitive market, which is far more nimble and adept at addressing consumer concerns than any regulator ever could be.[13] In considering the appropriate course for this competitive industry, CTIA urges the Commission to keep in mind the regulatory paradigm established for the CMRS industry which has produced unprecedented choices for consumers – with respect to providers, price plans, services, coverage areas, mobile devices and more,[14] in direct response to consumer feedback. There is broad consensus in American telecommunications policy, and indeed, reguatory policy, that for services where there is significant competition, such as there is for wireless services, "market

[12] *See, e.g.,* Cox comments at 13-16; Qwest comments at 34-36.

[13] *See infra* Section II (discussing why economic regulation is inappropriate for the highly competitive IP-enabled services market).

[14] *See, e.g., Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services,* Eighth Report, 18 FCC Rcd 14783 (2003).

forces can better meet the needs of consumers than can regulation."[15] For example, leading wireless carriers have adopted trial periods that range from 14 days to 30 days during which consumers can change their minds about entering into long-term contracts. "This choice is based on the carriers' commercial judgments about their costs of offering this option as well as consumers' perceived value of having this option . . . . Carriers in competitive markets have incentives to come up with a variety of ways to satisfy consumer preferences, taking into account consumer demands and service-provider costs."[16]

Not surprisingly, state regulators, who are most accustomed to regulating monopoly providers or industries dominated by monopolies, are most vocal in calling for state rights to regulate.[17] Ceding to their unfounded fears could stymie the development and proliferation of a technology that promises tremendous benefits for consumers. Further, preempting state regulation will not eliminate consumers' ability to seek help from regulators if they so need it. The Commission itself has demonstrated its ability to identify and successfully address consumer issues. For example, the Commission has successfully protected consumers' interests in the areas of slamming, cramming, and truth-in-billing. In addition, the Commission is well on its way to successfully protecting consumers' interests by implementing the CAN-SPAM Act with

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[15] "An Analysis of the Economic Effects of Applying the Proposed Rules to Wireless Telecommunications Service Providers and Their Customers," Michael L. Katz, Rulemaking 00-02-004, Before the State of California Public Utilities Commission (March 23, 2004), at 7.

[16] *Id.* Because providers in a competitive market already have economic incentives to offer the kinds of consumer benefits that state regulators purportedly try to engineer via regulation, there are significant dangers of distorting competition if regulators begin to undermine the commercial relationships between service providers in a competitive market and their consumers. *Id*. at 12-15.

[17] Arizona Corp. Comm'n comments at 10; Iowa Utilities Board comments at 3; Montana PSC comments at 4; NARUC comments at 10-12; Nebraska PSC comments at 13-16; PUCO comments at 18; Minnesota PUC comments at 10-11; Vermont PSB comments at 28.

respect to mobile phone text messages. Consumers also will have recourse to other federal agencies, such as the Federal Trade Commission, where appropriate.

Similarly, the Commission should not fear federal preemption for its impact on states' ability to generate revenue, including for E911 initiatives.[18] Preempting states' ability to regulate particular services does not automatically result in states' losing their ability to tax such services, assuming Congress has not prohibited same.[19] For example, state regulation of wireless carriers is largely preempted, yet states tax wireless carriers – in fact, at an average tax rate that exceeds most state general business use taxes.[20] The Commission should not avoid a correct regulatory result out of fear of speculative revenue effects.

II. A CROSS-SECTION OF INDUSTRIES, AND A MAJORITY OF COMMENTERS, AGREE THAT NO ECONOMIC REGULATION OF IP-ENABLED SERVICES IS WARRANTED

Most commenters agree with CTIA that the market for IP-enabled services is intensely competitive.[21] Multiple providers, including wireless carriers, are offering IP-enabled services to consumers. Covad notes that "the U.S. VoIP market has been forecasted to grow to more than five million subscribers by 2007, a five-fold increase over 2002 levels."[22] What was once a

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[18] *See, e.g.*, Kings County comments at 4.

[19] *See, e.g.*, San Francisco comments at 3.

[20] The average tax on wireless customers is more than 12% per month, while general state sales taxes average 5.9%. Gregory Sidak, "Do States Tax Wireless Services Inefficiently? Evidence on the Price Elasticity of Demand," at Table 5 (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=525523).

[21] *See, e.g.*, Joint BOC Filing, "Competition in the Provision of Voice Over IP and Other IP-Enabled Services," WC Docket No. 04-36 (filed May 28, 2004).

[22] Covad comments at 12-13.

niche service is becoming a major player. Internationally, VoIP has had an even more dramatic impact, now comprising more than 10% of all international traffic.[23]

Consistent with the competitive nature of the IP-enabled marketplace, there is significant record support for the Commission to apply a light regulatory touch for competitively provided IP-enabled services, regardless of whether those services are defined as information services or telecommunications services. Many commenters agree that, at a minimum, the Commission should not impose anachronistic, wireline-centric Title II economic regulation on IP-enabled services.[24] Economic regulation of this nascent service offers no upside for the consumer yet poses a significant threat to the continued development and proliferation of the service. Significantly, no commenter identifies evidence of market failure to justify imposing regulations that are typically reserved for industries controlled by monopoly providers.[25]

There is broad agreement among commenters that the Commission needs to avoid the arcane regulatory distinctions between telecommunications and information services as a basis

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[23] "Unleashing the Full Promise and Potential of Internet Voice Communication," VON Coalition (June 2004) at 11 (http://www.von.org/usr_files/whitepaper%20final.pdf).

[24] *See, e.g.*, AT&T comments at 2-3, 16-17; BellSouth comments at 14-23; Cisco comments at 8-9; FERUP comments at 10; Pulver comments at 21-22; USTA comments at 6; Verizon comments at 5-13.

[25] *See, e.g.*, Independent Telephone & Telecommunications Alliance comments at 8 (noting that economic regulation should not be imported to the IP-enabled services arena because the factors that occasioned legacy economic regulation do not exist, "namely (a) monopoly ownership (b) of bottleneck facilities, (c) as to which consumers lack the power to negotiate rates, terms and conditions for services. Absent proof that such factors exist in the Internet/IP realm, such economic regulation cannot be justified."). To the extent the Commission believes social policy-related regulation is appropriate, that can be applied under either Title I or Title II authority. *See infra* Section III.

for establishing such requirements for IP-enabled services.[26] If the Commission determines that such services fall within the scope of a traditional definition of "telecommunications service," and therefore are subject to Title II of the Act, the FCC should exercise its authority under section 10 of the Act and generally forbear from economic regulation.[27] If the Commission instead determines that IP-enabled services are more consistent with the definition of an information service subject to Title I authority, the Commission can apply an appropriately light touch to economic regulation (while subjecting the offerings to social policy obligations, as needed, pursuant to the Commission's ancillary authority).[28]

Nor does "layers theory" support a need for greater regulation.[29] It would be a grave mistake, for example, to accept the proposition that *all* facilities-based providers of IP services are de facto owners of a "bottleneck" facility that should be regulated.[30] Wireless carriers,

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[26] NCTA comments at 45 (noting that VoIP has the characteristics of both telecommunications and information services, but regardless of which classification is used, "the Commission can and should adopt a minimal and tailored regulatory regime for VoIP"); USTA comments at 18-19 ("All these varieties of services may not fit neatly in the same statutory category – a result that is hardly surprising, as these categories far predate the growth of IP technologies. Some IP-enabled services are certainly telecommunications services that are subject to Title II. Other services incorporate enhanced functionalities and thus may be information services subject to Title I. In the end, however, under both those statutory regimes, the Commission has the authority to create a deregulatory regime that gives parity of treatment to equivalent services and preserves important social policy goals."); Time Warner Inc. comments at 22.

[27] NASUCA comments at 26; NCTA comments at 47.

[28] *See infra* Section III. *See also* Time Warner Inc. comments at 22-25; Time Warner Telecom comments at 16-18; United States Conference of Catholic Bishops comments at 27-29.

[29] Indeed, the soundness of "layers theory" as a regulatory model has rightly been questioned. *See, e.g.*, "Free Ride: Deficiencies in MCI's 'Layers' Policy Model and the Need for Principles that Encourage Competition in the New IP World," New Millennium Research Council (July 2004) (http://www.newmillenniumresearch.org/news/071304_report.pdf).

[30] *See, e.g.*, MCI comments at 13-15.

currently competing with as many as five or six other carriers in many markets, clearly do not own a bottleneck facility – whether with respect to their traditional or broadband offerings. While there likely will be a number of alternatives for access to IP-enabled services, these varying facilities and their providers arrive at the IP-enabled services market in different regulatory, economic, and historical positions. Although a provider of wireline transmission facilities may be found to hold a bottleneck facility and therefore possess market power, this is far from a foregone conclusion in the wireless industry. A blanket finding would ignore the realities of today's wireless marketplace. In many instances, consumers can choose from multiple platforms, including wireless.

III. THERE IS WIDESPREAD AGREEMENT THAT IP-ENABLED SERVICE PROVIDERS SHOULD BE PERMITTED THE FLEXIBILITY TO EVOLVE CREATIVE SOLUTIONS TO SOCIAL POLICY OBJECTIVES

Among the most promising aspects of IP-based technology is its potential for innovation. The record shows that IP-enabled service providers are developing novel solutions to social policy goals including emergency response, law enforcement access, and disabilities access. As Vonage observes, for example, "IP networks will eventually allow more robust features than existing 911 systems, but these features will take time to develop."[31] Indeed, as one VoIP provider has stated publicly, if the industry doesn't "solve this 911 problem for VoIP, it's always going to be a second-class service."[32]

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[31] Vonage comments at 43. *See also* 8x8 comments at 21-23; Level 3 comments at 25; Microsoft comments at 19-21; Nuvio comments at 9; PointOne comments at 27; Pulver comments at 47.

[32] "VoIP Experts to Lawmakers: Don't Legislate '911' Technology," *Telecommunications Reports* (July 15, 2004) (quoting Timothy J. Lorello, senior vice president and chief marketing officer at TeleCommunications Systems).

Rather than reflexively requiring compliance with explicit technical requirements, the Commission should focus in the near term on articulating what it perceives as the pivotal social policy *goals* that new technologies like IP-enabled services must achieve. Once these goals are articulated, the Commission should then afford providers of IP-enabled service the ability and flexibility to develop and deploy the most innovative, consumer-friendly solutions available.[33] Only once it has been demonstrated that the market has failed to satisfy these goals should the Commission intervene.[34] This is consistent with the Commission's long-standing position, especially with respect to the CMRS industry, that a competitive industry and the marketplace are better positioned to select a technological path than regulators, even with respect to CALEA.[35]

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[33] *See, e.g.*, Microsoft comments at 20.

[34] *See, e.g.*, 8x8 comments at 21-23; ACN comments at 2; Cisco comments at 11-12; Microsoft comments at 20; Motorola comments at 14.

[35] When the Commission established technical rules for PCS and other CMRS providers, the Commission declined to set out a digital compatibility standard, seeking instead to provide licensees flexibility in developing their systems. *See Amendment of the Commission's Rules to Establish New Personal Communications Services*, Second Report and Order, 8 FCC Rcd 7700, ¶ 137 (1993). The Commission also imposed only minimal technical standards on PCS "only to the extent necessary to avoid harmful interference," leaving the details to industry standards groups. *See Amendment of the Commission's Rules to Establish New Personal Communications Services*, Memorandum Opinion and Order, 9 FCC Rcd 4957, ¶ 159 (1994). Congress called for a similar approach in enacting CALEA, leaving the details of compliance to industry standards bodies and carriers themselves, while calling for Commission involvement only for enforcement purposes or if disputes arise concerning the sufficiency of industry standards. *See* 47 U.S.C. §§ 107, 108; *Communications Assistance for Law Enforcement Act*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 22632, ¶ 7 (1998) (CALEA "envisions that an industry association or a standards-setting organization would set applicable standards" but "[i]ndividual carriers … are free to choose any technical solution that meets the assistance capability requirements of CALEA, whether based on an industry standard or not" and thus "have some degree of flexibility in deciding how they will comply").

Calls for "regulatory parity" with existing providers are generally red herrings – existing requirements were imposed on carriers because of market power or other market failure, which has not been demonstrated in the market for IP-enabled services. In any event, however, such concerns are best addressed, if at all, by "regulating down" and allowing competitive markets the freedom and flexibility to adapt to consumer demands and new technological innovations, rather than by "regulating up" and imposing increasing regulations on competitive industries.[36] The Commission should avoid the temptation, offered up by state regulators and consumer advocates, to preemptively impose regulations absent clear evidence of market failure.[37] Such prescriptive and precautionary actions produce counter-productive results.[38]

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[36] To achieve regulatory parity, the Commission can choose to regulate up or regulate down. FERUP argues that because the VoIP market is competitive now and consumers have a real choice – whether it be from traditional phone companies, wireless providers or other new VoIP providers – regulatory parity must exist. FERUP comments at 11 ("Regulatory symmetry works to send accurate price signals, maintain a level playing field, and promote merit-based competition (as opposed to regulatory arbitrage)."). As such, all VoIP providers, whether from new firms or established providers, should be subject to the same regulatory or deregulatory regime. Citing Commr. Abernathy's Nascent Services Doctrine, which calls for restraint from regulators when faced with new technologies or services, FERUP advocates that the Commission regulate down for all providers of VoIP service.

[37] Cutting across boundaries, commenters from different sides of the issue agree that the FCC should not regulate absent market failure (although the parties may disagree as to what constitutes a market failure). *See, e.g.,* BT Americas comments at 1 (noting that regulation should not occur absent a market failure, but noting that a market failure probably exists in the last mile access to facilities); USTA comments at 6 ("Because the benefits of reliance on the market are so clear, the Commission should displace it through economic regulation *only* where there is a clear market failure that necessitates intervention. Far from exhibiting any signs of such a market failure, however, all the evidence shows that the market for IP-enabled services is highly competitive with low barriers to entry and no "bottleneck" that could even arguably warrant economic regulation."); MCI comments at 10 (stating that the FCC should impose regulation only with respect to the "layer(s) where providers have market power); Net2Phone comments at 20 (noting that regulation should not occur absent a market failure and no such failure exists in the provisioning of IP-enabled services).

[38] FERUP comments at 10 ("The economic regulation to which many regulators have, unfortunately, become accustomed is not rational in today's emerging IP-enabled market. In a

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IV. THERE IS WIDESPREAD SUPPORT FOR BROADENING THE BASE OF CONTRIBUTORS TO UNIVERSAL SERVICE

Most commenters agree with CTIA that the best way to preserve universal service, as it is currently defined and administered, is to broaden the base of contributors to include providers of IP-enabled services.[39] Expanding the base of contributors to include providers of IP-enabled services preserves the universal service system while also maintaining competitive neutrality. The statute itself demands that contributions to universal service be "equitable and nondiscriminatory."[40] Existing payors should not be put at a competitive disadvantage by being subject to regulatory obligations not applicable to their new IP-enabled competitors.[41] Migration from circuit-switched architecture to packet-based architecture and IP-enabled services must not provide an opportunity for providers to create unreasonable advantages for themselves, and disadvantages for others, solely through arbitrage. Chairman Powell's statement in the declaratory ruling regarding AT&T's phone-to-phone IP telephony services reinforces this

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competitive market, economic regulation is a certain disincentive to the investment that is required to build out the next-generation networks. VoIP, for example, is part of an IP-enabled network that is being built out by intermodal competition where there is no dominant player. As such, VoIP providers should not be subject to rules designed to substitute for competition in monopoly markets.").

[39] *See, e.g.*, Verizon comments at 56; Illinois Commerce Comm'n comments at 14-15; NTCA comments at 9; Communications Workers of America comments at 17-18; Eliot Spitzer, Attorney General of the State of New York, comments at 10; Nebraska PSC comments at 7; USTA comments at 37; TracFone Wireless comments at 4-5; New Jersey Division of the Ratepayer Advocate comments at 6; The Rural Carriers comments at 9.

[40] 47 U.S.C. § 254(d).

[41] In advocating broadening the base of universal service contributors to include IP-enabled service providers, CTIA specifically does not take the position that all IP-enabled services should be classified as telecommunications services. Rather, CTIA suggests that the Commission should expand the contribution base as widely as possible under the existing statutory structure, pending revisions to the overall system, to ensure the viability of the existing
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position: "To allow a carrier to avoid regulatory obligations simply by dropping a little IP in the network would merely sanction regulatory arbitrage and would collapse the universal service system virtually overnight."[42] The FCC must not create regulatory arbitrage opportunities by creating a separate class of providers not subject to the same universal service obligations.

In the long term, Commission policy promoting the proliferation of lower-cost IP-enabled services could contribute to reducing the overall burden on universal service funds. IP-enabled services, which are generally less costly than circuit-switched services, could make the provision of services supported by universal service more economical, thereby reducing the burden on the universal service system. As IP-enabled services and other competitive offerings make the provision of service more affordable, increased consumer demand may be sufficient to support deployment of supported service at lower subsidy levels, or entirely without subsidies.[43] Thus, the Commission should reevaluate the continued necessity of universal service support at current levels as IP-enabled services and other competitive offerings expand in the marketplace and provide new efficiencies.

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system without placing additional burdens on existing classes of payors. *See, e.g.*, Comcast comments at 15; NTCA comments at 9; AT&T comments at 37-39.

[42] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457 (2004) (Sep. Statement of Chairman Michael K. Powell).

[43] CTIA comments at 13.

CONCLUSION

For the foregoing reasons, the Commission should act in this proceeding to preserve exclusive federal jurisdiction over IP-enabled services and to avoid unwarranted economic regulation in this new, competitive marketplace. The Commission should give providers of IP-enabled services a reasonable amount of time to develop innovative solutions to social policy obligations and should ensure a broad, competitively neutral base for funding universal service support mechanisms.

Respectfully submitted,

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